PUBLIC PROSECUTOR

v.

LIP LOCK YUEN CO.

HIGH COURT MALAYA, SHAH ALAM
WAN YAHYA J
[SELANGOR ULANGBICARA JENAYAH NO. 51-96 TAHUN 1987]
28 FEBRUARY 1990

CRIMINAL PROCEDURE: *Contravention of reg. 133(3) of Food Regulation - Prohibited substance in preserved fruit - Charge couched in misleading words - Effect of.*

The respondent was charged with the sale of 2 packets of preserved fruit which, according to the language of the charge, was found to contain a sweetening substance, without cyclamate. Regulation 133(2) of the Food Regulations however, intended to prohibit the use of cyclamate, a prohibited substance.

Held:
The wording of the charge, did not disclose the offence which s. 133(2) of the Food Regulations 1985 envisaged.

Legislation referred to:
Food Regulation 1985, reg. 133(3)
Food Act 1983, s. 13(1)

Bagi pihak merayu - Mohamad Hanafiah bin Zakaria, Timbalan Pendakwa Raya Selangor
Bagi pihak menentang - Low Hop Bing; M/s. Low Hop Bing & Associates

JUDGMENT

Wan Yahya J:

I had dismissed this appeal summarily on 19 September 1989 but gave no written judgment. Since then my attention has been drawn to various decisions made in Magistrate Courts in Selangor as a result of possible misappreciation of my order.

The accused in this case was charged for alleged contravention of r. 133(3) of the Food Regulation 1985 (PU(A) 437/85) which is an offence punishable under s. 13(1) of the Food Act 1983. The charge in Bahasa Malaysia reads as follows:

> Bahawa kamu pada 25 Jun 1986, kira-kira pukul 10.10 pagi, ada menjual melalui Tee Aik Heng, KP: 4771159, dua (2) bungkus Highclass preserved fruit berharga RM5.60 di Aik Heng Mini Market, Lot 9-B, Jalan Radin Satu Kiri, Sekinchan, dalam daerah Sabak Bernam, dalam Negeri Selangor kepada Inspektor Kesihatan En. Shodali bin Masongoot yang mana mengikut keputusan analisa telah didapati mengandungi pemanis tanpa zat Cyclamate yang dilarang. Kamu telah tidak mematuhi Peraturan 133(3) daripada Peraturan-Peraturan Makanan 1985 (P.U. (A) 437/85) dan dengan itu telah melakukan kesalahan di bawah s. 13(1)(e) daripada Akta Makanan 1983 dan boleh dihukum di bawah s. 13(1) daripada Akta yang sama."

The relevant part of the charge to which the offence relates, appears in the paragraph above as 'telah didapati mengandungi pemanis tanpa zat, *Cyclamate* yang dilarang', or in English 'found to contain a sweetening substance without nuitritive cyclamate.' It would appear from this unfortunate misplacement of words, that the appellant was being charged with possession of a sweetener which has no cyclamate in it i.e., the very opposite of what r. 133(2) intended to prevent or putting it in another way an act which that rule did not prohibit.

In the course of hearing the DPP's address, I did express to him my curiosity as to why sacharin and sodium sacharin which are also non-nutritive sweetening substance were permitted under Schedule Seventeen of the Regulations whereas a similar substance i.e., cyclamate was prohibited. But I would like to impress herein that this comment was never intended to form part of the rationale for my decision.

I had dismissed the appeal because the charge, which as I understood it, disclosed no offence but not for any other associated reason.

Also found at [1990] 1 CLJ 964